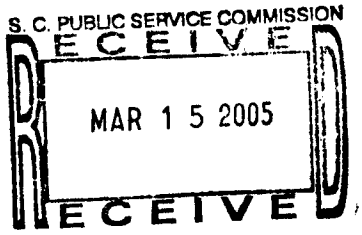
BellSouth Telecommunications, Inc.
Legal Department
1600 Williams Street
Suite 5200
Columbia, SC 29201

patrick.turner@bellsouth.com

Patrick W. Turner
General Counsel-South Carolina

803 401 2900
Fax 803 254 1731

March 15, 2005



Mr. Charles Terreni
Chief Clerk of the Commission
Public Service Commission of South Carolina
Post Office Drawer 11649
Columbia, South Carolina 29211

Re: Petition to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting From Changes of Law
Docket No. 2004-316-C

Dear Mr. Terreni:

By letter dated March 9, 2005, BellSouth Telecommunications, Inc. ("BellSouth") filed various Orders by which other state Commissions have addressed the Federal Communications Commission's Triennial Review Remand Order. As a supplement to that filing, BellSouth respectfully submits copies of the following:

Order of the United States District Court for the Northern District of Georgia (addressing the Georgia Commission's Order) (March 14, 2005)(Exhibit A)

Order of the Illinois Commerce Commission (March 9, 2005) (Exhibit B)

Order of the Indiana Utility Regulatory Commission (March 10, 2005) (Exhibit C)

Order of the Kansas Corporation Commission (March 10, 2005)(Exhibit D)

Order of the Kentucky Public Service Commission (March 10, 2005) (Exhibit E)

Letter reflecting decision of the Maryland Public Service Commission (March 10, 2005) (Exhibit F)

Memo reflecting decision of the Massachusetts Department of Telecommunications and Energy (March 10, 2005) (Exhibit G)

Order of the Michigan Public Service Commission (March 9, 2005) (Exhibit H)

Order of the United States District Court for the Eastern District of Michigan (March 11, 2005)((Exhibit I).

Webpage reflecting decision of the Rhode Island Public Utilities Commission (March 8, 2005)(Exhibit J).

By copy of this letter, I am serving all parties of record.

Sincerely,

Patrick W. Turner

PWT/nml
Enclosure
DM5 577052

EXHIBIT A

5

FILED IN CLERK'S OFFICE
U.S.D.C. - Atlanta

MAR 14 2005

LUTHER D. THOMAS, Clerk
By: Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

BELLSOUTH TELECOMMUNICATIONS, INC.,

Plaintiff,

v.

MCIMETRO ACCESS TRANSMISSION SERVICES, LLC, et al.,

Defendants.

No. 1:05-CV-674-CC

S. C. PUBLIC SERVICE COMMISSION
RECEIVED
MAR 15 2005
RECEIVED

ORDER

Having considered Plaintiff's Motion for Expedited Briefing and Hearing on BellSouth's Emergency Motion for Preliminary Injunction and Supporting Memorandum ("Plaintiff's Motion for Expedited Briefing and Hearing"), and for good cause shown, it is hereby ORDERED that

(1) Plaintiff's Motion for Expedited Briefing and Hearing is GRANTED;

(2) Any defendant who wishes to oppose BellSouth's Emergency Motion for Preliminary Injunction must file and serve its brief in opposition no later than March 24, 2005;

(3) BellSouth may reply to any brief in opposition by filing and serving its reply no later than March 31, 2005;

(4) No party will file any other papers unless requested by the Court; and

(5) A hearing will be held on BellSouth's Emergency Motion for Preliminary Injunction on April 6 2005. at 4:00 P.M.

SO ORDERED, this 14th day of March, 2005.

Judge, United States District Court
Northern District of Georgia
Atlanta Division

EXHIBIT B

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Cbeyond Communications, LLP,	:	
Global TelData II, LLC f/k/a	:	
Global TelData, Inc.,	:	**05-0154**
Nuvox Communications of Illinois, Inc.	:	
and Talk America Inc.	:	
-vs-	:	
Illinois Bell Telephone Company	:	

ORDER GRANTING EMERGENCY RELIEF

By the Commission (through its Administrative Law Judge):

I. Procedural History

On March 7, 2005, Cbeyond Communications, LLP, Global TelData, Inc., Nuvox Communications of Illinois, Inc., and Talk America, Inc. ("Complainants"), filed this verified Complaint against Illinois Bell Telephone Company, d/b/a SBC Illinois ("SBC"), alleging that SBC is in violation of each of the following: its interconnection agreements ("ICAs") with each of the Complainants; its Illinois intrastate tariffs; Section 13-801 Illinois Public Utilities Act ("Illinois Act")[1]; the Commission's Order in Docket 01-0614; the Federal Communications Commission's ("FCC's") SBC/Ameritech Merger Order; provisions of the FCC's Triennial Review Remand Order ("TRRO")[2]; and Section 13-514[3] of the Illinois Act. Applicants contend that SBC has affronted these authorities by issuing Accessible Letters stating that, effective March 11, 2005, SBC will not accept new orders for certain unbundled network elements ("UNEs") and will increase certain UNE rates.

The Complaint also contains a request for emergency relief. The specific components of that request are set forth in Section III of this Ruling, below.

On March 8, 2005, SBC filed a Response in Opposition ("Response") to Complainants' request for emergency relief. SBC urges the Commission to deny that request in all respects.

---

[1] 220 ILCS 5/13-801.

[2] Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, WC Docket No. 04-313; CC Docket No. 01-338, Order on Remand, (released Feb. 4, 2005).

[3] 220 ILCS 5/13-514.

II. The Complaint

As discussed above, the Complaint alleges violations of the parties' respective ICAs, the Illinois Act, SBC's Illinois tariffs, and Orders issued this Commission and the FCC. The Complaint seeks declaratory and injunctive relief with respect to these claims, as well as damages, costs and fees. Complainants also request the imposition of penalties on SBC. All of the purported violations arise from SBC's publication of Accessible Letters stating that SBC would not accept or process new orders for mass market switching, DS1, DS3 and dark fiber loops and dedicated DS1, DS3 and dark fiber transport.

Complainants aver that they have each satisfied the notice requirement in subsection 13-515(c) of the Illinois Act by sending letters to SBC on March 2 and 3, 2005, requesting that SBC correct certain conduct identified in that correspondence within 48 hours. Complaint, Ex. A. SBC apparently received that correspondence, as evidenced by electronic mail attached to the Complaint. *Id.*

III. Emergency Relief Requested

Complainants ask for emergency relief in the following manner: "Grant [Complainants] an emergency order pursuant to Section 13-515(e) of the [Illinois Act] as requested herein." The Commission assumes that this general request is associated with the following elements in the prayer for relief in the Complaint

> C. Order SBC Illinois to cease and desist from its breaching the terms of the current interconnection agreements between it and the individual Joint CLECs;
>
> ***
>
> E. Order SBC to cease and desist from violating Section 13-801(a), Section 13-801(d)(3) and Section 13-801(d)(4) of the Illinois Public Utilities Act;
>
> F. Order SBC to cease and desist from violating the Commissions findings in its Order in ICC Docket No. 01-0614;
>
> G. Order SBC to cease and desist from violating the provisions of its valid intrastate tariffs obligating SBC Illinois to provide unbundled access to network elements and combinations of network elements at the tariffed rates;
>
> H. Order SBC to cease and desist from violating the FCC's findings in the *SBC/Ameritech Merger Order*;

I. Order SBC to cease and desist from violating Sections 13-514(1), 13-514(2), 13-514(6), 13-514(8), 13-514(10), 13-514(11) and 13-514(12) of the Illinois Public Utilities Act;

J. Order SBC to cease and desist from any imposition of unreasonable obstacles or charges on the Joint CLECs attempts to commingle special access and UNEs.

IV. Applicable Statute

The law governing a request for emergency relief by a telecommunications provider is set forth in subsection 5/13-515(e) of the Illinois Act:

> If the alleged violation has a substantial adverse effect on the ability of the complainant to provide service to customers, the complainant may include in its complaint a request for an order for an order for emergency relief. The Commission, acting through its designated hearing examiner or arbitrator, shall act upon such a request within 2 business days of the filing of the complaint. An order for emergency relief may be granted, without an evidentiary hearing, upon a verified factual showing that the party seeking relief will likely succeed on the merits, that the party will suffer irreparable harm in its ability to serve customers if emergency relief is not granted, and that the order is in the public interest. An order for emergency relief shall include a finding that the requirements of this subsection have been fulfilled and shall specify the directives that must be fulfilled by the respondent and deadlines for meeting those directives. The decision of the hearing examiner or arbitrator to grant or deny emergency relief shall be considered an order of the Commission unless the Commission enters its own order within 2 calendar days of the decision of the hearing examiner or arbitrator. The order for emergency relief may require the responding party to act or refrain from acting so as to protect the provision of competitive service offerings to customers. Any action required by an emergency relief order must be technically feasible and economically reasonable and the respondent must be given a reasonable period of time to comply with the order.

220 ILCS 5/13-515(e).

V. Commission Analysis and Conclusion

Initially, the Commission concludes that discontinuing the offering of certain UNEs meets the threshold requirement in subsection 13-515(e) that the conduct alleged in a complaint must have "a substantial adverse effect on the ability of the complainant to provide service to customers." As Complainants argue, the sudden inability to offer certain products to end-users may result in the loss of customers and difficulty in competing for new customers.

In the context of ruling Complainant's request for emergency relief, we find it necessary to consider only whether the Federal Communications Commission ("FCC"), in the TRRO, held that any changes to an existing ICA for the purpose of implementing the TRRO must be accomplished through the negotiation, mediation and arbitration procedures contained in Section 252 and the parties' respective ICAs. If that claim is correct, it follows that unilateral implementation by SBC, in the manner set forth in the pertinent Accessible Letters, ignores Section 252 and the ICAs and contravenes the TRRO.

A. The basis for emergency relief

Subsection 13-515(c) establishes three conditions for emergency relief: "[1] that the party seeking relief will likely succeed on the merits, [2] that the party will suffer irreparable harm in its ability to serve customers if emergency relief is not granted, and [3] that the order is in the public interest." The Commission has addressed these conditions in previous proceedings. Order Granting Emergency Relief, Docket 02-0443, July 8, 2002, ("Ameritech Emergency Relief Order"); Order Granting Emergency Relief, Docket 02-0160, Feb. 27, 2002, ("Z-Tel Emergency Relief Order").

Regarding the likelihood of success on the merits, a party seeking a preliminary injunction in the Illinois courts need not prove its entire case with respect to an asserted right. Instead, it is required only to show that it raises a "fair question" about the existence of that right and "that the trial court should preserve the status quo until the case can be decided on its merits." C.D. Peters Co. v. Tri-City Regional Port District, 281 Ill. App. 3d 41, 47, 216 Ill. Dec. 876, 880, 666 N.E. 2d 44, 48 (5th Dist. 1996). The Commission applied that standard in the Ameritech Emergency Relief Order and in the Z-Tel Emergency Relief Order.

In the TRRO, the FCC plainly stated that "carriers must implement changes to their [ICAs] consistent with our conclusions in this Order." TRRO, ¶233. Thus, there is no question that the parties here will have to revise their ICAs to reflect the FCC's current view of availability and pricing for the UNEs addressed in the TRRO. Accordingly, SBC's intention to transact business with Complainants in a manner that differs from certain substantive provisions of the parties' existing ICAs is supported by the TRRO. For purposes of emergency relief, however, the question is whether SBC can ignore certain terms of its ICAs *now*, without first altering the terms of those ICAs

through bilateral negotiations and, if needed, dispute resolution proceedings, with each Complainant. In other words, the dispositive issue is not whether the parties' ICAs and business dealings must change, but *how* such change must occur and *when* the parties can begin operating under revised terms.

For the purpose of resolving Complainants' emergency relief request, the Commission concludes that Complainants have, at a minimum, raised a fair question of whether the parties must conduct negotiations and, if necessary, utilize dispute resolution mechanisms *prior to* modifying their existing ICAs and transacting business in a manner inconsistent with those ICAs. The FCC flatly stated: "We expect that [ILECs] and competing carriers will implement the Commission's findings as directed by section 252 of the [Federal] Act." TRRO, ¶233. Section 252 contemplates bilateral negotiation and, when needed, arbitration or mediation. It does not contemplate unilateral action, either to alter an ICA or to transact business as if that ICA had already been altered.

SBC expresses considerable concern that negotiation and dispute resolution will result in delayed implementation of the FCC's TRRO directives, adversely affecting SBC. However, the FCC anticipated that some delay would inevitably occur in implementation. The familiar processes described in Section 252 inherently take time, and the FCC did nothing to compress those processes. Instead, it warned carriers to not "unreasonably" delay implementation of the TRRO and encouraged state commissions to guard against "unnecessary" delay. Had the FCC intended that ILECs would unilaterally alter the ground-rules in existing ICAs, and to immediately conduct business under modified terms – that is, if the FCC had intended to avert *any* delay in implementation - it would have said so. But it did not. It prescribed a bilateral process with built-in time requirements.

SBC also takes the position that its Accessible Letters "faithfully track" the TRRO's provisions and, therefore, must be viewed as simple implementation of "unambiguous and unconditional" requirements, not unilateral terms. Response at 7. In effect, SBC is claiming that there is nothing for the parties to negotiate (although SBC does acknowledge that ICA negotiations must take place, albeit while the parties transact business under SBCs new terms). The Commission disagrees, for several reasons.

First, for some of the UNEs involved here, the FCC established numerical impairment thresholds in the TRRO[4]. SBC's Accessible Letters provide no process for determining, or disputing, whether those thresholds have been reached.

Second, the TRRO provides that a CLEC may self-certify that it is entitled to unbundled access to certain UNEs. TRRO, ¶233. When that occurs, the ILEC "must immediately process the request" and utilize ICA dispute resolution mechanisms if it questions the CLEC's self-certification. *Id.* SBC's Accessible Letters appear to turn this

[4] With respect to DS1 loops, for example, the number of business lines or collocators at a wire center, or the number of loops in a building, will determine the availability of that UNE.

process around, permitting SBC to reject any request it regards as "new," and leaving the burden of dispute resolution to the CLEC.

Third, even when it is otherwise undisputed that a "new" UNE need not be provided, as with dark fiber, it must still be provided to the CLEC's "embedded base" during the applicable transition period created in the TRRO. The Accessible Letters assume that the "embedded base" refers to the specific UNEs that will be in place on March 11, 2005. Complainants argue, however, that the "embedded base" refers to existing customers on that date, rather than to the specific UNEs those customers are using. Complaint at 16. Without deciding now whose position is correct - we see support for both positions in the text of the TRRO - this very dispute indicates that implementation of the TRRO is not "unambiguous," as SBC views it.

Complainant's likelihood of success on the merits must also be determined in the context of Section 13-514 of the Illinois Act, which Section 13-515 helps implement. Section 13-514 states that a telecommunications carrier shall not knowingly impede the development of competition in any telecommunications service market. Complainants have raised a fair question as to whether SBC has violated Section 13-514's general prohibition, as well as the particular *per se* impediments included in subsections 13-514 (6), (8), and (10)[5].

To be clear, we do not find at this preliminary stage that the substantive provisions in SBC's Accessible Letters plainly contradict the TRRO or any other authority. Rather, we simply hold now that Complainants have presented a fair question of whether the use of the unilateral Accessible Letters, instead of Section 252 processes, to modify the terms under which the parties will presently transact business, is authorized by the TRRO. Indeed, our preliminary conclusion is that the TRRO does not permit such self-help. Moreover, the Accessible Letters do not address, or may wrongly decide, how some of the details of TRRO implementation will be accomplished. For the time being, we believe that the FCC intended for those details to be addressed through bilateral negotiations and, if needed, dispute resolution.

Concerning irreparable harm, we have previously that such harm need not be beyond the possibility of repair or beyond compensation in damages. Z-Tel Emergency Relief Order; Prentice Medical Corp. v. Todd, 145 Ill. App. 3d 692, 701 (1st Dist. 1986). Irreparable harm includes transgressions of a continuing nature, such as damage to the good will or competitive position of a business, which would be incalculable. *Id.* Further, prolonged interruptions in the continuity of business relationships can cause irremediable damages for which no compensation would be adequate. *Id.*

According to Complainants, the principal harm that would allegedly result here is that Complainants would be handicapped in their provision of services to both existing

[5] *E.g.*, subsection 13-514(8) states that it is a *per se* impediment to the development of competition for a carrier to violate "the terms of or unreasonably delay[] implementation of an interconnection agreement entered into pursuant to Section 252 of the federal Telecommunications Act of 1996 in a manner that unreasonably delays, increases the cost, or impeded the availability.

and new customers. Complaint at 44. This would purportedly harm their customer relations and reputation in the marketplace. Moreover, Complainants emphasize that such harm would occur in a competitive context, in which SBC itself would derive benefit from the harm it ostensibly caused Complainants.

SBC responds that Complainants can readily obtain alternative services, whether from SBC or other providers. Indeed, SBC stresses, the FCC found in the TRRO that CLECs face no impairment in connection with certain UNEs precisely because market alternatives are easily obtained. Response at 23.

With respect to the availability of the UNEs involved here, the Commission finds that irreparable harm is a reasonably predictable outcome if SBC were permitted to insist upon immediate compliance with its Accessible Letters. The potential impact of sudden disruption of Complainants' operations, and of the services, service quality and reliability enjoyed by their customers, is sufficient to provide relief now. Moreover, the monetary value of such disruption, along with the value of lost goodwill in the market, cannot be readily quantified for compensation purposes. While alternative suppliers exist, the quality, reliability and cost of their offerings could cause service interruptions, diminished service quality and cash-flow or credit problems for Complainants. Further, Complainants would have to make immediate decisions on these matters (before March 11) and other providers would be aware of, and could exploit, such immediacy. We believe that the FCC, in the TRRO, was very mindful of the need for orderly transitions by carriers. Ultimately, if we denied emergency relief, Complainants might win the battle in this proceeding and still lose the war for customers, because of the repetition of service adjustments (i.e., an adjustment now to comply with Accessible Letters, and a subsequent adjustment if they prevailed on the merits later).

In contrast, with regard to pricing, the Commission cannot conclude that Complainants would suffer irreparable harm if the price increases in the Accessible Letters, which mirror the increases mandated by the TRRO, took immediate effect. Those increases are precisely quantified now and will remain so at the end of this case. Consequently, if Complainants prevail on their underlying Complaint, compensation can be precisely quantified. Thus, while Complainants would suffer harm if SBC incorrectly applies a price increase to a given UNE, that harm would not be irreparable.

Concerning the public interest, we discussed above some of the harm to Complainants' customers that is predictably associated with the harm that Complainants would likely incur from immediate changes to UNE availability. In addition, all telecommunications customers could be adversely affected by damage to the fair and effective competition promoted by the Illinois Act.

As previously stated, since we will order emergency relief with respect to UNE availability, based on our interpretation of the TRRO, Section 252 and the parties existing ICAs, we will not address Complainants' other basis for emergency relief.

B. The contents of emergency relief

The actions required by an emergency relief order under subsection 13-515(e) "must be technically feasible and economically reasonable and the respondent must be given a reasonable period to time to comply with the order." 220 ILCS 5/13-515(e). In this instance, we will require SBC refrain from implementing the terms and provisions of its Accessible Letters, except for pricing provisions that completely and accurately reflect the pricing provisions of the TRRO. Therefore, SBC must continue making the pertinent UNEs available to Complainants without reference to the Accessible Letters or the contents of those letters (except pricing provisions). This requirement to maintain the pre-March 11 status quo is unquestionably technically feasible. It is also economically reasonable, since the terms and conditions in the parties' ICAs have been approved by this Commission. SBC does not argue otherwise. Moreover, SBC is not precluded from implementing the price increases prescribed in the TRRO (because of our ruling, above, regarding irreparable harm).

This emergency Order is effective until the parties have an amended their ICAs pursuant to the process contained in Section 252 of the Federal Act or as directed by the Commission in a Order in this proceeding.

VI. Findings and Ordering Paragraphs

The Commission, having considered the entire record and being fully advised in the premises, is of the opinion and finds that:

(1) Complainants are telecommunications carriers within the meaning of Section 13-202 the Act and are authorized to provide local exchange service within the State of Illinois;

(2) SBC is a telecommunications carrier within the meaning of Section 13-202 of the Act and is authorized to provide local exchange service within the State of Illinois;

(3) the Commission has jurisdiction over the parties and the subject matter of this Complaint;

(4) Complainants have shown that the conduct alleged in the Complaint is likely to have a substantial adverse effect on it ability to provide service to customers;

(5) Complainants have also shown that they will likely succeed on the merits with regard to immediate implementation of SBC's Accessible Letters , that they will suffer irreparable harm in their ability to serve customers if emergency relief is not granted, and that certain emergency relief described in the prefatory portion of this Order is in the public interest;

(6) Complainants have shown that certain emergency relief described in the prefatory portion of this Order is technically feasible and economically reasonable;

(7) Complainants should be granted the following relief:

SBC should be ordered to continue to offer the same UNEs as required by the parties' current ICAs until those ICAs are amended pursuant to Section 252 or as directed by the Commission in its final order in this proceeding.

IT IS THEREFORE ORDERED that Complainants' Motion for Emergency Relief is granted in part and denied in part.

IT IS FURTHER ORDERED that SBC is ordered to continue to offer the same UNEs as required by the parties' current ICAs until those ICAs are amended pursuant to Section 252 or as directed by the Commission in its final order in this proceeding.

IT IS FURTHER ORDERED that the relief ordered herein is interim in nature and that the Commission shall conduct a hearing on the remaining allegations of the Complaint.

IT IS FURTHER ORDERED that this decision is not a final order and is not subject to the Administrative Review Law.

By decision of the Administrative Law Judge this 9th day of March, 2005.

David Gilbert
Administrative Law Judge

EXHIBIT C

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION
302 W. WASHINGTON STREET, SUITE E-306
INDIANAPOLIS, INDIANA 46204-2764

http://www.state.in.us/iurc/
Office: (317) 232-2701
Facsimile: (317) 232-6758

FILED

MAR 10 2005

INDIANA UTILITY REGULATORY COMMISSION

COMPLAINT OF INDIANA BELL TELEPHONE COMPANY, INCORPORATED D/B/A SBC INDIANA FOR EXPEDITED REVIEW OF A DISPUTE WITH CERTAIN CLECS REGARDING ADOPTION OF AN AMENDMENT TO COMMISSION APPROVED INTERCONNECTION AGREEMENTS

CAUSE NO. 42749

You are hereby notified that on this date the Presiding Officers in this Cause make the following Entry:

On March 8, 2005, NuVox Communications of Indiana, Inc. ("NuVox"), a Respondent in this proceeding, filed its *Motion for Emergency Order to Enforce the Commission's January 21, 2005 Entry and Its Interconnection Agreement with SBC Indiana* ("Motion") with the Indiana Utility Regulatory Commission ("Commission"). The Motion asserts that the Complainant in this Cause, Indiana Bell Telephone Company, Incorporated d/b/a/ SBC Indiana ("SBC Indiana") has stated that on or after March 11, 2005, it intends to not provision certain orders for DS1 and DS3 loops, DS1 and DS3 transport, and dark fiber. Such action, according to NuVox, will cause it irreparable harm and will breach SBC Indiana's currently effective, Commission-approved interconnection agreement with NuVox. NuVox requests that the Commission, on or before March 10, 2005, issue a directive requiring SBC Indiana to (1) continue accepting and processing the orders for dark fiber, DS1 loops and transport, and DS3 loops and transport, under the rates, terms and conditions of NuVox's Interconnection Agreement from and between all wire centers in SBC Indiana's operating territory, and (2) comply with the change of law provisions of NuVox's Interconnection Agreement with regard to the implementation of the Federal Communication Commission's ("FCC's") *Triennial Review Remand Order* ("TRRO")[1] before implementing the Accessible Letters issued by SBC Indiana. SBC Indiana filed a Response to the Motion on February 9, 2005. This Response has not yet been considered.

It appears that this emergency Motion could have been filed in a timelier manner since the Accessible Letters that are of concern to NuVox were issued by SBC Indiana on February 11, 2005. In any event, the Presiding Officers find that the Motion needs to be fully briefed and considered before ruling on the Motion. Therefore, NuVox's request for a ruling on the Motion within two days of when the Motion was filed is insufficient time for us to consider all of the information necessary to issue a ruling. And even

[1] Order on Remand, *In re Unbundled Access to Network Elements*, WC Docket No. 04-313, CC Docket No.01-338, 2005 WL 289015 (FCC Feb. 4, 2005).

though we issued a Docket Entry in this Cause on March 9, 2005, ruling on a similar emergency motion by other CLEC Respondents on the issue of the continued provisioning of UNE-P in light of the TRRO, we find it appropriate to allow time for the parties to fully present their positions.

Our initial review of the Motion, however, reveals an issue that we think should, at least on an interim basis, be addressed prior to March 11, 2005, in order to avoid the possibility of undue harm to NuVox. The Motion states that SBC has identified to the FCC certain specific wire centers in Indiana for or between which it will not provide DS1/DS3/dark fiber loops or transport. It is our reading of the Motion that NuVox is maintaining that some of these specified wire centers would qualify as impaired pursuant to the criteria established in parts V and VI the TRRO, thereby entitling NuVox to unbundled access to these elements at these wire centers. The TRRO, at ¶ 234, establishes a process whereby a CLEC in requesting unbundled access to dedicated transport and high-capacity loops must self-certify in its request that it is entitled to unbundled access pursuant to the criteria set forth in the TRRO. Upon receipt of such a request the ILEC is required to provision the element, though it can subsequently challenge its obligation to provide access through the dispute resolution process of its interconnection agreement. An ILEC, therefore, is not entitled to deny access to dedicated transport and high-capacity loops based on its determination that unbundled access is not required under TRRO.

Accordingly, as of March 11, 2005, SBC Indiana should not deny a request by NuVox for unbundled access to high-capacity loops or dedicated transport based on a SBC determination that access is not required at the relevant wire center(s). Both SBC Indiana and NuVox should follow the provisioning procedures set forth in ¶ 234 of the TRRO. This interim ruling on the Motion will be further addressed in a final ruling.

In order to provide a reasonable time in which to respond, any additional Response to the Motion should be filed on or before March 14, 2005. Any Reply to the Response should be filed on or before March 17, 2005.

IT IS SO ORDERED.

Judith G. Ripley, Commissioner

William G. Divine, Administrative Law Judge

3-10-05

Date

EXHIBIT D

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Before Commissioners: Brian J. Moline, Chair
Robert E. Krehbiel
Michael C. Moffet

In the Matter of a General Investigation to Establish a Successor Standard Agreement to the Kansas 271 Interconnection Agreement, Also Know as the K2A.	))))	Docket No. 04-SWBT-763-GIT

ORDER GRANTING IN PART AND DENYING IN PART FORMAL COMPLAINT AND MOTION FOR AN EXPEDITED ORDER

The above captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having examined its files and records, and being duly advised in the premises, the Commission makes the following findings:

Background

1. On March 5, 2004, the Commission opened this docket to provide a proceeding to establish a successor agreement to the Kansas 271 Agreement (K2A). On November 18, 2004, the Commission issued an Order Denying Motion to Abate Arbitrations, Directing Arbitrations to Continue on Certain Issues, and Adopting Certain Terms on an Interim Basis. In this order, the Commission bifurcated the pending arbitrations, ordering the issues regarding UNEs, reciprocal compensation, and performance measurements to be decided in Phase II, and the remaining issues to be decided in Phase I. November 18, 2005 Order, 9-10. On January 4, 2005, the Commission granted SWBT's Petition for

Reconsideration and/or Clarification, and set forth deadlines for the Phase I arbitrator's award of February 16, 2005, and a final Commission order by May 16, 2005. With respect to Phase II, the Commission set the deadline for the arbitrator's award for April 29, 2005. The final Commission order on the Phase II arbitration is scheduled to be issued on June 30, 2005.

2. On March 3, 2005, Birch Telecom of Kansas, Inc., Cox Kansas Telcom, L.L.C., ionex communications, Inc., NuVox Communications of Kansas, Inc., and Xspedius Communications, L.L.C. (collectively, CLEC Coalition) filed their Formal Complaint and Motion for an Expedited Order (Complaint). The CLEC Coalition in their Complaint sought an order preventing Southwestern Bell Telephone, L.P. (SWBT) from amending or breaching its existing interconnection agreements with the CLEC Coalition members. Complaint, 1. The CLEC Coalition alleged that SWBT intends to amend or breach these interconnection agreements on March 11, 2005. Complaint, 1. On March 8, 2005, Navigator Telecommunications, LLC (Navigator) filed its Application to Join in Complaint Filed by CLEC Coalition. On March 7, 2005, AT&T Communications of the Southwest, Inc. and TCG Kansas City, Inc. (AT&T) filed its Response to the CLEC Coalition's Complaint. On March 8, 2005, Prairie Stream Communications was added to the CLEC Coalition.

3. On March 4, 2005, the Commission issued its Order Establishing Procedural Schedule, requiring a response from SWBT by March 8, 2005, at 12:00 p.m. and setting the matter for oral argument on March 10, 2005. On March 7, the Staff of the Commission (Staff) filed its Response to Formal Complaint and Motion for Expedited

Order. SWBT filed its Answer and Response to Motion for Expedited Review on March 8, 2005. On March 8, 2005, the Citizens' Utility Ratepayer Board (CURB) filed its Response to the CLEC Coalition's Formal Complaint and Motion for Expedited Order.

4. The Commission heard oral arguments on the Complaint on March 10, 2005.

FCC Background

5. The Federal Communications Commission issued its Order on Remand in CC Docket No. 01-338 (TRRO) following remand in *United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004). In the TRRO, the FCC clarified its unbundling framework under which impairment is to be evaluated. TRRO, ¶ 5. Also, it promulgated new impairment standards for dedicated interoffice transport, high-capacity loops, and mass market local circuit switching. TRRO, ¶ 5. Within the context of the new standards for impairment, the FCC specified various terms of transition for the CLEC's embedded customer base. TRRO, ¶ 5.

Jurisdiction

6. The Commission has jurisdiction over this matter pursuant to 47 U.S.C. § 252(b).

Self-Effectuating Nature of FCC Order

7. The CLEC Coalition argues that changes in the legal landscape effected by the FCC's TRRO should be incorporated into the existing interconnection agreements through negotiation prior to affecting the legal relationship between the CLECs and SWBT. Complaint, 2. This can be done, it maintains, through the section 252 process which refers to the present arbitrations discussed above. Complaint, 2-3. Therefore, the

CLEC Coalition seeks an order from the Commission declaring that the CLECs can continue to have access to SWBT's network pursuant to existing arrangements until the changes in the TRRO can be negotiated and implemented into new interconnection agreements.

8. SWBT disagrees with the CLEC Coalition's position, maintaining that the TRRO is self-effectuating and immediately bars CLECs from adding new customers based upon a UNE-P basis. Response, 9-10. SWBT explains that it makes no sense to hold otherwise. As the FCC has clearly espoused a desire to move away from UNE-P, it makes no sense to continue to permit CLECs to make these arrangements even on a temporary basis. Response, 10.

9. The Commission agrees with SWBT's position regarding the self-effectuating nature of the TRRO as to serving new customers. First, the CLECs are incorrect to maintain that there is an existing interconnection agreement. Rather, the Commission extended the terms relating to UNEs, intercarrier compensation, and performance measurements on an interim basis. November 18, 2004 Order, 10-11. There is no basis for this Commission to order the parties to maintain a status quo while negotiating a new interconnection agreement within the legal context set forth by the FCC in its TRRO. Rather, as to new customers, the FCC has issued its rules regarding impairment and SWBT and the CLECs must abide by those rules for the simple reason that no contrary agreement exists. While some terms of the interconnection agreement were extended by the Commission, that extension is no longer valid in light of the FCC's order. Second, the Commission agrees with SWBT that the FCC is clear in that as of March 11, 2005, the

mass market local circuit switching and certain high-capacity loops are no longer available to CLECs on an unbundled basis for new customers. TRRO, ¶ 227 ("This transition period shall apply only to the embedded customer base, and does not permit competitive LECs to add new UNE-P arrangements using unbundled access to local circuit switching pursuant to section 251(c)(3) except as otherwise specified in this Order."). It does not make sense to delay implementation of these provisions by permitting an interconnection scheme contrary to the FCC's rulings to persist. Last, any harm claimed by the CLECs to be irreparable today is no different from the harm that they must inevitably face in the relatively short term as a result of implementing the FCC's new rules. On the other hand, the sooner the FCC's new rules can be implemented, the sooner rules held to be illegal can be abrogated.

Embedded Customer Base

10. The CLEC Coalition argues the "embedded customer base" referred to in the TRRO to which the transition period applies refers to customers, not existing lines. Complaint, 9. SWBT takes the opposite position, arguing that the embedded customer base to which the transition period applies does not permit the CLECs to add new elements. SWBT Response, 3.

11. The Commission agrees with the CLEC Coalition regarding the meaning of "embedded customer base." First, the Commission finds that based on the language of the regulation adopted by the FCC's TRRO that it is the intent of the FCC that the transition period apply to customers, not lines. In the final regulations, the FCC ordered that ILECs are not required to provide access to local circuit switching on an unbundled

basis. 47 C.F.R. § 51.319(d)(2)(ii). However as to the "embedded base of end-user customers," the ILEC must provide such access. 47 C.F.R. § 51.319(d)(2)(iii). Consistent with the CLEC Coalition's position, the Commission interprets this language as referring to customers, not lines.

12. Second, the Commission is concerned with matters raised by the counsel for the CLEC Coalition in oral argument suggesting certain technical difficulties associated with mixing services based on a UNE-P basis and services based on a resale or commercial agreement basis for the same customer. Accordingly, the Commission finds that it is the intent of the FCC in its TRRO to permit CLECs to consistently serve its customer base, which includes adding services, lines, and servicing customers at new locations.

13. Last, the Commission finds that SWBT has a clear remedy in monetary terms in the event this Commission's definition of embedded customer base is wrong. Any changes in the arrangements of the parties will be subject to a true up. Therefore, the CLECs may be forced to compensate SWBT for the use of its facilities not at the unbundled rate, but at some other rate based upon resale or a commercial agreement. On the other hand, there is no similar remedy of true down for the CLECs. If the CLECs pay the rate based on a commercial agreement or resale, this arrangement will be outside the jurisdiction of the Commission and not subject to a revision in the future. After balancing the interests of the parties, the extent of injury the parties might suffer, and the interests of the public, the Commission concludes the balance of interests weighs in favor

of the CLECs in interpreting the FCC's intent in using the term "embedded customer base."

CLEC Access to Data Supporting Wire Centers

14. Staff raises an additional point in its response not addressed by the CLEC Coalition. Staff Response, ¶ 8. Staff is concerned that the data supplied by SWBT needed by the CLECs for making decisions on whether to self-certify that they are entitled to orders for dedicated transport and high-capacity loops is not accessible. Staff Response, ¶ 8. SWBT points out that the data supporting its wire center determinations is on file with the FCC and can be viewed, subject to the terms of a protective order. At oral argument, SWBT assured the Commission that, subject to the FCC protective order the information is now or will be shortly made available in Kansas. If after review CLECs self-certify in areas SWBT has determined to be ineligible, SWBT must follow the procedures outlined in ¶ 234 by processing the order and contesting the certification at the Commission.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. The Commission grants in part and denies in part the Complaint. The FCC's TRRO is to govern the relationship between SWBT and the CLECs as to new customers. As to the embedded customer base of the CLEC, as that phrase is defined and interpreted above, SWBT and the CLECs are ordered to continue working under the terms of Phase I of the arbitration, in addition to those terms extended by the Commission's November 18, 2004 and January 4, 2005 Orders. The final deadline for an arbitrator's award is scheduled for April 29, 2005, at which time it will replace this order and become the

interim order of the Commission until the Commission finally approves the contracts filed pursuant to the Commission's order on the arbitration

B. This Order is to be served by facsimile transmission to the attorneys for SWBT and the CLEC Coalition. Other parties are to be served by mail.

C. A party may file a petition for reconsideration of this Order within fifteen (15) days from the date of service of this Order. K.S.A. 66-118b; K.S.A. 2004 Supp. 77-529(a)(1).

D. The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further order or orders, as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Moline, Chr.; Krehbiel, Comm.; Moffet, Comm.

Dated: MAR 10 2005

ORDER MAILED

MAR 11 2005

Susan Duffy Executive Director

Susan K. Duffy
Executive Director

sre

EXHIBIT E

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION OF BELLSOUTH TELECOMMUNICATIONS, INC. TO ESTABLISH GENERIC DOCKET TO CONSIDER AMENDMENTS TO INTERCONNECTION AGREEMENTS RESULTING FROM CHANGES OF LAW	))))))	CASE NO. 2004-00427

O R D E R

On February 28, 2005, Cinergy Communications Corp. ("Cinergy"), a competitive local exchange carrier ("CLEC"), filed a complaint and motion for emergency order preserving status quo. On March 1, 2005, the Commission required BellSouth Telecommunications, Inc. ("BellSouth") to satisfy the complaint or file a written response thereto by no later than March 7, 2005. BellSouth has timely responded to the complaint.

On March 7, 2005, AmeriMex Communications Corp. ("AmeriMex"), another CLEC, filed an emergency petition addressing the same issues as those addressed in Cinergy's complaint. The Commission, on its own motion, incorporated AmeriMex's petition into this docket and required BellSouth to respond as if to a formal complaint. On March 8, 2005, BellSouth responded to Amerimex.

The CLECs assert that despite BellSouth's carrier notification indicating to the contrary, BellSouth must continue to accept unbundled network element orders until it and the CLECs have completed their negotiations required by change of law provisions in their currently effective interconnection agreements. The matters complained of

arose on February 11, 2005 with BellSouth's notification to CLECs that it intended to discontinue providing certain unbundled network elements pursuant to its understanding of the Federal Communications Commission ("FCC") Triennial Review Remand Order.[1] BellSouth asserts that the plain reading of the Triennial Review Remand Order authorizes it to cease providing certain unbundled network elements as of March 11, 2005, the FCC's designated effective date for its order.

The Commission, having considered the emergency petitions and BellSouth's responses thereto, and having been otherwise sufficiently advised, finds that a change of law within the meaning of the existing effective contract terms between BellSouth and these CLEC carriers has occurred. Because these contracts are in effect, BellSouth must follow the contract language to change its interconnection agreements. Nothing in the Triennial Review Remand Order justifies an immediate change without the parties having an opportunity to negotiate a new contract. In fact, the FCC contemplates negotiated changes to these contracts:

> We expect that incumbent LECs and competing carriers will implement the Commission's findings as directed by section 252 of the Act. Thus, carriers must implement changes to their interconnection agreements consistent with our conclusions in this Order. We note that the failure of an incumbent LEC or a competitive LEC to negotiate in good faith under section 251(c)(1) of the Act and our implementing rules may subject that party to enforcement action. Thus, the incumbent LEC and competitive LEC must negotiate in good faith regarding any rates, terms, and conditions necessary to implement our rule changes. We expect that parties to the negotiating process will not unreasonably delay implementation of the conclusions adopted in this Order. We encourage the state commissions to monitor this area closely to ensure that parties do not engage in unnecessary delay.[2]

---

[1] Triennial Review Remand Order, Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carrier, FCC 04-290(Feb. 4, 2005)

[2] *Id.* at ¶ 233 (footnotes omitted)

IT IS THEREFORE ORDERED that:

1. BellSouth shall follow its contractual obligation to negotiate the effect of changes of law on its interconnection agreements regarding the discontinuation of unbundled network elements.

2. By no later than April 15, 2005, the parties shall apprise the Commission, in writing, of the status of their negotiations, if they have not previously submitted negotiated agreements addressing these issues.

3. Issues not addressed herein shall remain pending in this docket.

Done at Frankfort, Kentucky, this 10th day of March, 2005.

By the Commission

Commissioner W. Gregory Coker did not participate in the deliberations or decision concerning this case.

ATTEST:

Executive Director

EXHIBIT F

STATE OF MARYLAND

ROBERT L. EHRLICH, JR.
GOVERNOR

MICHAEL S. STEELE
LIEUTENANT GOVERNOR

COMMISSIONERS

KENNETH D. SCHISLER
CHAIRMAN

J. JOSEPH CURRAN, III
HAROLD D. WILLIAMS
ALLEN M. FREIFELD

PUBLIC SERVICE COMMISSION

ML# 96341

March 10, 2005

Carville B. Collins, Esquire
DLA Piper Rudnick Gary Cary US LLP
6225 Smith Avenue
Baltimore, Maryland 21209

Michael A. McRae, Esquire
MCI
2200 Loudoun County Parkway
Ashburn, Virginia 20147

David A. Hill, Esquire
Vice President & General Counsel
Verizon Maryland Inc.
One East Pratt Street, 8E/MS06
Baltimore, Maryland 21202

Re: Emergency Petition of MCI for a Commission Order Directing Verizon to Continue to accept New Unbundled Network Element Platform Orders

Dear Counsel:

On March 1, 2005, MCImetro Access Transmission Services, LLC ("MCI") petitioned the Public Service Commission ("Commission") for an order directing Verizon Maryland Inc. ("Verizon") to comply with the "change of law" provisions contained in the parties' interconnection agreement ("ICA"). Furthermore, MCI seeks a directive to Verizon that it continue to accept and process unbundled network element platform ("UNE-P") orders until such time as it has concluded the change of law process. On March 7, 2005, a Petition to Intervene and Comments in Support of MCI's Emergency Petition was filed on behalf of Allegiance Telecom of Maryland, A.R.C. Networks Inc. d/b/a InfoHighway Communications Corporation, SNiP LiNK LLC, and XO Maryland LLC (hereinafter referred to collectively as "Petition Supporters"). On March 8, 2005, Verizon filed its Opposition to the Emergency Petition of MCI. Subsequently, on March 10, 2005, MCI filed a letter withdrawing, without prejudice, its Emergency Petition stating that it had reached a commercial agreement with Verizon that resolved the issue raised in its Petition.

As a general matter, the Commission is pleased to see parties resolve their differences outside of formal adjudication. The Commission encourages the parties to continue to work together in the future to similarly address disputes that may arise. MCI's request to withdraw its Emergency Petition is hereby granted.

With respect to the Petition Supporters, the Commission notes that given MCI's withdrawal of its Petition, the issue of intervention becomes moot. As such, the Commission hereby denies the request of the Petition Supporters to intervene in the MCI/Verizon interconnection agreement dispute. To the extent the Petition Supporters believe that their specific interconnection agreements, or the *Triennial Review Remand Order*[1] itself, do not support any proposed action of Verizon the Petition Supporters may file individualized petitions based upon their particular interconnection agreements and specific provisions of the *Triennial Review Remand Order* for the Commission's consideration. For this purpose, the Commission will designate Case No. 9026 as the vehicle for parties to file such petition. Additionally, the Commission would remind MCI, Verizon and the Petition Supporters that the rights of all parties shall be determined by the parties' interconnection agreements and the FCC's applicable rules, including those specifying the procedures to be employed when orders for unbundled loops or transport are disputed. At this point in time, the Commission is not aware of any actual disputes regarding loop or transport orders. If any such disputes arise, Verizon and the ordering carrier are directed to abide by the FCC's direction in the *Triennial Review Remand Order* to fill the order and to then bring the dispute to the Commission, which will resolve the matter expeditiously. We note in this regard Paragraph 234 of the *Triennial Review Remand Order* which provides that "the incumbent LEC must provision the UNE and subsequently bring any dispute regarding access to that UNE before a state commission or other appropriate authority."

By Direction of the Commission,

O. Ray Bourland
Executive Secretary

cc: Andrea Pruitt Edmonds, Esquire, Counsel for Petition Supporters
Parties of Record, Case No. 9026

[1] In the Matter of Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, *Order on Remand*; WC Docket No. 04-313; CC Docket No. 01-338; FCC 04-290 (rel. February 4, 2005) ("*Triennial Review Remand Order*").

EXHIBIT G

404-614-4054

The Commonwealth of Massachusetts

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

TO: D.T.E. 04-33 Service List (via first class mail and email)

FROM: Tina W. Chin, Arbitrator
Jesse S. Reyes, Arbitrator

DATE: March 10, 2005

RE: Petition of Verizon New England, Inc. d/b/a Verizon Massachusetts for Arbitration of Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Massachusetts Pursuant to Section 252 of the Communications Act of 1934, as amended, and the Triennial Review Order - D.T.E. 04-33

Briefing Questions to Additional Parties

CC: Mary Cottrell, Secretary

On March 1, 2005, the Department issued a set of briefing questions to Verizon Massachusetts ("Verizon") and to a list of CLECs, whose interconnection agreements Verizon claims to contain change of law provisions that are self-executing. That is, Verizon claims that, with respect to such interconnection agreements, it had the right to implement changes of law prior to the conclusion of this proceeding. On March 4, 2005, certain CLECs[1] jointly filed a Petition for Emergency Declaratory Relief seeking a declaratory ruling that Verizon may not unilaterally implement the terms of the Triennial Review Remand Order, which is effective on March 11, 2005, and that (1) Verizon must continue to accept orders for UNEs no longer required to be unbundled by the Triennial Review Remand Order under the rates, terms, and conditions of its existing interconnection agreements, and that (2) Verizon must comply with the change of law provisions of its interconnection agreements with regard to implementation of the Triennial Review Remand Order. Verizon filed its Opposition on

---

[1] The petitioners include BridgeCom International, Inc., Broadview Networks, Inc., Broadview NP Acquisition Corp., A.R.C. Networks, Inc. d/b/a InfoHighway Communications Corp., DSCI Corp., XO Massachusetts, Inc., and XO Communications, Inc.. The Department received comments in support of the petition from Covad Communications Company, RNK, Inc. d/b/a RNK Telecom, and PAETEC Communications, Inc.

March 9, 2005, arguing that the FCC established a 12-month transition period beginning on the effective date of the Triennial Review Remand Order, after which date "requesting carriers may not obtain" certain network elements as UNEs. Therefore, Verizon claims that it may implement the Triennial Review Remand Order on March 11, 2005.

Verizon's claim that it may implement the Triennial Review Remand Order on March 11, 2005, without first negotiating new interconnection agreement terms, potentially affects the rights of all parties to this proceeding, not simply those whose agreements Verizon claims to contain self-executing change of law provisions. Therefore, the Arbitrators issue the following briefing questions to Verizon and to each individual CLEC party that was not already named in Attachment A of the March 1, 2005 briefing questions, so that the Department may consider the issues raised by the CLECs in their Petition for Emergency Declaratory Relief and determine in the final order of this proceeding the applicable rights and remedies of all parties according to their interconnection agreements. Briefs on these questions shall be submitted along with the parties' briefs on the open arbitration issues. Initial briefs are due April 1, 2005. Reply briefs are due April 15, 2005.

1. Notwithstanding the carrier's substantive arguments in this proceeding regarding proposed rates, terms, or conditions for any specific service, for each carrier's individual interconnection agreement, please identify each and every term that is relevant to whether or not the interconnection agreement's change of law or dispute resolution provisions permit the parties to implement changes of "applicable law" without first executing an amendment to the interconnection agreement. In providing your response, please quote the relevant interconnection agreement provisions, citing them by section, and provide highlighted copies of the relevant language.

2. Indicate whether a change of law or dispute resolution provision has been triggered and state the date on which each condition precedent or party obligation (*e.g.*, notice requirements) was met, if applicable, with regard to the implementation of the Triennial Review Remand Order, or any other statutory, judicial, or regulatory change, state or federal, that you claim did modify the parties' rights under the interconnection agreement.

Responses to the foregoing questions should also be summarized in tabular form for each individual carrier. Responses for different carriers may be grouped together where the relevant operative provisions of the carriers' interconnection agreements have identical legal effect

Finally, please add Jesse Reyes [jesse.reyes@state.ma.us] to your service lists for this proceeding. If you have any questions, please contact Tina Chin at (617) 305-3578 or Jesse Reyes at (617) 305-3735.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Petition of Verizon New England , Inc. d/b/a Verizon Massachusetts for Arbitration of Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Massachusetts pursuant to Section 252 of the Communications Act of 1934, as amended, and the Triennial Review Order.	D.T.E. 04-33

REVISED PROCEDURAL SCHEDULE
March 10, 2005

April 1, 2005	Initial Position Statements/Briefs on non-rate issues due.
April 15, 2005	Reply Position Statements/Briefs on non-rate issues due.
June 30, 2005	Final Order to be issued.

EXHIBIT H

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter, on the Commission's own motion, to commence a collaborative proceeding to monitor and facilitate implementation of Accessible Letters issued by **SBC MICHIGAN** and **VERIZON**.	)))))	Case No. U-14447

At the March 9, 2005 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. J. Peter Lark, Chairman
Hon. Robert B. Nelson, Commissioner
Hon. Laura Chappelle, Commissioner

ORDER

On February 28, 2005, the Commission commenced a collaborative process for implementation of "Accessible Letters" issued by SBC Michigan (SBC) and Verizon. The collaborative was instituted after a number of competitive local exchange carriers (CLECs), including Talk America Inc. (Talk), and XO Communications, Inc. (XO), filed objections to certain proposals and pronouncements made in five Accessible Letters dated February 10 and 11, 2005 by SBC, which is an incumbent local exchange carrier (ILEC) under the federal Telecommunications Act of 1996 (FTA), 47 USC 251 *et seq.*

Accessible Letter No. CLECAM05-037 (AL-37), which is dated February 10, 2005, states that SBC will be withdrawing its wholesale unbundled network element (UNE) tariffs "beginning as early as March 10, 2005." AL-37, p. 1. Accessible Letter No. CLECALL05-017 and Accessible Letter No. CLECALL05-018 (AL-18), which are each dated February 11, 2005, state that SBC

will not accept new, migration, or move local service requests (LSRs) for mass market unbundled local switching (ULS) and unbundled network element-platform (UNE-P) on or after March 11, 2005, notwithstanding the terms of any interconnection agreements or applicable tariffs. In AL-18, SBC additionally states that effective March 11, 2005, it will begin charging CLECs a $1 surcharge for mass market ULS and UNE-P. Accessible Letter No. CLECALL05-019 and Accessible Letter No. CLECALL05-020 (AL-20), which are each dated February 11, 2005, state that as of March 11, 2005, SBC will no longer accept new, migration, or move LSRs for certain DS1 and DS3 high capacity loops, DS1 and DS3 dedicated transport, dark fiber transport, and dark fiber loops. Also, in AL-20, SBC states that beginning March 11, 2005, it will be charging increased rates for the embedded base of DS1 and DS3 high capacity loops, DS1 and DS3 dedicated transport, dark fiber transport, and dark fiber loops.[1]

On March 7, 2005, Talk and XO filed a joint emergency motion requesting the Commission to address certain issues that have arisen during the initial phases of the collaborative that they allege demand immediate attention. According to Talk and XO, at the first collaborative meeting, SBC reiterated its intent to act unilaterally on March 11, 2005 pursuant to its Accessible Letters. Talk and XO insist that SBC's threatened and impending actions would violate the plain language of the Federal Communications Commission's (FCC) February 4, 2005 order regarding unbundling obligations of ILECs.[2] Talk and XO have identified the following issues due to their effect on the

[1]The Commission became aware that Verizon had issued at least two similar Accessible Letters. Because the arguments raised by the CLECs with regard to SBC's proposed actions applied with equal force to the actions proposed by Verizon, the Commission included Verizon in the collaborative process. However, the Commission notes that the motion filed by Talk and XO does not include any requested relief with regard to Verizon.

[2]*In the Matter of Unbundled Access to Network Elements*, WC Docket No. 04-313 and *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338. *(TRO Remand Order).*

CLECs and because these matters appear to be contrary to the direction of the FCC in the *TRO Remand Order*:

1. Citing Paragraph 234 of the *TRO Remand Order,* Talk and XO argue that SBC has threatened not to provision high-capacity loops and transport on and after March 11, 2005 even where a CLEC has undertaken a reasonably diligent inquiry and, based on that inquiry, self-certifies that, to the best of its knowledge, its request is consistent with the requirements of the *TRO Remand Order.* Instead, they maintain that SBC has threatened to reject any such orders that SBC believes does not satisfy the *TRO Remand Order.*

2. Talk and XO contend that SBC has threatened to cease providing access on and after March 11, 2005 to unbundled local switching to CLECs seeking to serve their embedded base of end-user customers as required by 47 CFR 51.319(d)(2)(iii) during the 12-month transition period. Instead, they maintain that SBC has stated that it will reject all move, add, and change orders[3] submitted by CLECs to serve their embedded base of end-user customers.

3. Citing footnote 398 in Paragraph 142 of the *TRO Remand Order,* Talk and XO insist that SBC intends to self-implement rule changes that favor SBC while at the same time refusing to implement rule changes from the FCC's 2003 Triennial Review Order (*TRO*)[4] that were unaffected by United States Circuit Court of Appeals' decision in *United States Telecom Assn v Federal Communications Comm,* 359 F3d 554 (DC Cir 2004) (*USTA II*) or the *TRO Remand Order,* despite the fact that the *TRO Remand Order* recognized that the *TRO* rule changes should be implemented to minimize the adverse impact of the *TRO Remand Order* on CLECs.

Additionally, citing Paragraphs 233, 143, 196, and 227 of the *TRO Remand Order,* Talk and XO argue that SBC intends to implement these and other changes without regard to the "change of law" provisions in their existing interconnection agreements with SBC. Talk and XO state that

---

[3]A move order is submitted by a CLEC to an ILEC when an existing CLEC customer moves to a new address. An add order is submitted when an existing customer seeks to add an additional line to his service. A change order is submitted when an existing customer seeks to add or delete a feature, such as three-way calling.

[4]*Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, 17145, para. 278 (2003).

they filed this motion to seek a Commission order requiring SBC, at minimum, to abide by the terms of the *TRO Remand Order.* Accordingly, Talk and XO request that the Commission grant their emergency motion and order SBC to continue provisioning additional UNE-P access lines to serve a CLEC's embedded base of end-user customers. Talk and XO also assert that the Commission must order SBC to provision moves and changes in UNE-P access lines in a manner that will allow a CLEC to serve the needs of its embedded base of end-user customers during the 12-month transition period of the *TRO Remand Order.*

Talk and XO insist that SBC must be ordered to continue to process requests for access to a dedicated transport or high capacity loop UNE upon receipt of a self-certification from the requesting provider, that to the best of its knowledge, the requesting provider believes to be consistent with the requirements of the *TRO Remand Order.* Talk and XO contend that the Commission should order that SBC may not refuse to process such requests based solely on SBC's belief the requesting provider's self-certification is defective or that the provider did not engage in a reasonably diligent inquiry. Talk and XO maintain that, before implementation of the *TRO Remand Order* rules, SBC should be directed to implement the *TRO* rules unaffected by *USTA II* or the *TRO Remand Order*, such as (1) routine network modifications to unbundled facilities, including loops and transport, at no additional cost or charge, where the requested transmission facilities have already been constructed [*See*, 47 CFR 51.319(a)(8), 51.319(e)(5)], (2) commingling an unbundled network element or a combination of unbundled network elements with one or more facilities or services that a CLEC has obtained at wholesale [*See*, 47 CFR 51.309(e) and (f) and 51.318], and (3) the CLEC certification regarding the qualifying service eligibility criteria for each high-capacity enhanced extended loop/link (EEL)[5] circuits [*See*, 47 CFR 51.318(b)].

[5]A loop to a connection between two or more central offices.

At a session of the collaborative held on March 7, 2005, Orjiakor Isiogu, Director of the Commission's Telecommunications Division, who was designated by the Commission to oversee the collaborative, announced that responses to Talk's and XO's motion had to be filed no later than 5:00 p.m. on March 8, 2005, which is permitted pursuant to Rule 335(3) of the Commission's Rules of Practice and Procedure, R 460.17335(3), and that the Commission intended to act on Talk's and XO's motion on March 9, 2005.

Responses in support of the motion were filed by the Commission Staff, Attorney General Michael A. Cox, AT&T Communications of Michigan, Inc., and TCG Detroit, LDMI Telecommunications, Inc., TDS Metrocom, LLC, MCImetro Access Transmission Services LLC, McLeodUSA Telecommunications Services, Inc., and TelNet Worldwide, Inc., Quick Communications, Inc., d/b/a Quick Connect USA, Superior Technologies, Inc., d/b/a Superior Spectrum, Inc., CMC Telecom, Inc., Grid 4 Communications, Inc., Zenk Group, Ltd., d/b/a Planet Access, CTS Communications, Inc., and Global Connection Inc. of America. In the interests of time, the Commission simply notes the general agreement of these parties with the positions taken by Talk and XO.

SBC and Verizon filed responses in opposition to the motion.[6] SBC urges the Commission to reject the attempt to delay its lawful and appropriate implementation of the FCC's new rules. In so doing, SBC maintains that the Commission's previous determinations concerning adherence to change of law provisions in interconnection agreements and claims that ILECs are forcing contract terms on CLECs are not at issue in this proceeding. Rather, SBC insists that the motion asks for relief of an extraordinary nature that the Commission has no authority to grant. SBC complains that the motion is bereft of any reference to the Commission's authority to entertain the motion.

[6]Verizon's comments are consistent with the comments filed by SBC.

According to SBC, it would be wrong for the Commission to act in haste or without carefully examining its authority to do so.

Next, SBC calls upon the Commission to question whether the relief requested by Talk and XO should be granted in the absence of some showing by the CLECs that they will ever place an order with SBC that SBC will reject. According to SBC, Talk and XO simply failed to assert that they will be harmed. SBC explains that it has already disclosed a list of wire centers that meet the *TRO Remand Order* non-impairment thresholds for high capacity loop and dedicated transport facilities. *See*, Exhibit A to SBC's response. After citing a portion of Paragraph 234 of the *TRO Remand Order*, SBC asserts that:

> SBC Michigan does not believe it will be possible for any CLEC to make the required "reasonably diligent inquiry" and then to certify that it is entitled to high-capacity dedicated transport between two offices that are on the list SBC submitted to the FCC, or that it is entitled to a high-capacity loop in a wire center that is on the list SBC submitted to the FCC. That is especially so in view of the fact that the CLECs also have access, subject to protective order, to data SBC has filed with the FCC underlying the list SBC has submitted. Accordingly, consistent with the *TRRO*, SBC Michigan does not expect to receive or process after March 11, 2005, any CLEC orders for high capacity loops or dedicated transport involving wire centers that are on those lists.

SBC's response, p. 5. Moreover, SBC contends that the failure of Talk and XO to affirmatively allege that they will suffer harm by SBC's inplementation of its determinations is reason enough to reject their motion.

With regard to new UNE-P arrangements, SBC stresses that the FCC has instituted a nationwide bar on UNE-P. Citing myriad paragraphs of the *TRO Remand Order*, including Paragraphs 5, 204, 210, 227, and 228, SBC insists that the FCC only required UNE-P to be made available during the transition period to the embedded base of lines, not the embedded base of customers, as alleged by Talk and XO. According to SBC, as of March 11, 2005, it has been relieved of the obligation to provision new UNE-P arrangements of any kind. SBC argues that the

FCC would not have intended the interpretation proffered by Talk and XO because it would perpetuate earlier illegal attempts to broadly define impairment. SBC also argues that an unscrupulous CLEC might even attempt to evade the FCC's ban on new UNE-P deployment by disconnecting existing lines and ordering new ones.

Finally, in response to the change of law argument raised by Talk and XO, SBC contends that the operative language in their interconnection agreements provides an ample basis for rejecting their positions. According to SBC, even apart from what the *TRO Remand Order* provides, the plain language of Talk's and XO's interconnection agreements invalidates any contractual obligation by SBC that is inconsistent with those new rules as of March 11, 2005.

The Commission finds that the relief requested by Talk and XO should be granted and that the Commission has the authority to do so. In so doing, the Commission rejects SBC's position that the Commission has no authority to address the merits of Talk's and XO's motion. In Paragraph 233 of the *TRO Remand Order*, the FCC stated that ILECs and CLECs must implement changes to their interconnection agreements consistent with the *TRO Remand Order*. The FCC also stated that the ILECs and CLECs are obligated to negotiate in good faith under Section 251(c)(1) of the FTA regarding any rates, terms, and conditions necessary to implement the rule changes. Indeed, the FCC explicitly observed that "[w]e encourage the state commissions to monitor this area closely to ensure that parties do not engage in unnecessary delay." Paragraph 233 of the *TRO Remand Order*. As first noted in the February 28 order, the quoted portion of Paragraph 233 indicates that the FCC does not contemplate that ILECs may unilaterally dictate to CLECs the changes to their interconnection agreements necessary to implement the FCC's findings in the February 4 order. It also indicates that the Commission has an important role in the process by which ILECs and CLECs resolve their differences through good faith negotiations. In Paragraph

233, the FCC stated that Section 251(c)(1) applies to the efforts of the ILECs and CLECs to implement changes to their interconnection agreements. Section 251(c)(1) specifically requires that such negotiations are governed by Section 252 of the FTA. Additionally, notwithstanding whether the negotiations are voluntary under Section 252(a)(1) or subject to compulsory arbitration under Section 252(b)(1), Congress has required that the resulting interconnection agreement is subject to approval by this Commission. Moreover, the Commission notes that the Legislature specifically granted the Commission "the jurisdiction and authority to administer ... all federal telecommunications laws, rules, orders, and regulations that are delegated to the state." MCL 484.2201. Therefore, the Commission finds that there is no merit to SBC's claim that the Commission lacks jurisdiction to entertain Talk's and XO's motion.

The Commission also rejects SBC's procedural and policy complaints about Talk's and XO's motion. To begin with, contrary to SBC's argument, the motion does not involve "an affirmative injunction of apparent indefinite duration." SBC response, p. 2. In setting up the collaborative, the Commission directed that "the collaborative process be conducted in a manner that will bring it to a successful end in no more than 45 days." February 28 order, p. 6. Beyond the time necessary for the completion of the work of the collaborative, it was the FCC that established the duration of the transition period for implementation of the *TRO Remand Order*. While SBC may be dissatisfied with the length of the transition period, that issue is not before the Commission. Rather, Talk's and XO's motion concerns the fact that SBC is threatening to violate the FCC's *TRO Remand Order* by denying access to essential UNEs that they allege the FCC required ILECs to provision for the duration of the transition period.

Likewise, the Commission does not conclude that its decision to take up this matter on an expedited basis is objectionable. The motion filed by Talk and XO raised a matter of extreme

urgency. The Commission's motion pleading rules, which are set forth at R 460.17335, specifically allow for the shortening of the time for the filing of responsive pleadings, which was communicated to participants at the March 7, 2005 collaborative meeting. The Commission finds that even a cursory examination of the volume and quality of the responses filed by the parties contradicts SBC's bare allegation that the notice was "absurdly short." SBC's response, p. 2.

Turning to the merits of the motion, the Commission is persuaded that SBC's position with regard to its ability to review and reject a CLEC's self-certification for the purposes of Paragraph 234 of the *TRO Remand Order* is inconsistent with the clear and unambiguous language used by the FCC. Paragraph 234 of the *TRO Remand Order* states:

> We recognize that our rules governing access to dedicated transport and high-capacity loops evaluate impairment based upon objective and readily obtainable facts, such as the number of business lines or the number of facilities-based competitors in a particular market. We therefore hold that to submit an order to obtain a high-capacity loop or transport UNE, a requesting carrier must undertake a reasonably diligent inquiry and, based on that inquiry, self-certify that, to the best of its knowledge, its request is consistent with the requirements discussed in parts IV, V, and VI above and that it is therefore entitled to unbundled access to the particular network elements sought pursuant to section 251(c)(3). **Upon receiving a request for access to a dedicated transport or high-capacity loop UNE that indicates that the UNE meets the relevant factual criteria discussed in sections V and VI above, the incumbent LEC must immediately process the request. To the extent that an incumbent LEC seeks to challenge any such UNEs, it subsequently can raise that issue through the dispute resolution procedures provided for in its interconnection agreements. In other words, the incumbent LEC must provision the UNE and subsequently bring any dispute regarding access to that UNE before a state commission or other appropriate authority.**

Paragraph 234 of the *TRO Remand Order.* (Emphasis added, footnotes deleted).

The language used by the FCC does not indicate that an ILEC may unilaterally take any action to reject the effort of a CLEC to self-certify impairment for the purposes of the provisioning of access to dedicated transport and high-capacity loops. Rather, the FCC required ILECs to accept that such representations are facially valid and only subject to after-the-fact scrutiny. Accordingly,

SBC may not reject a CLEC's request to provision high capacity loops and transport without a review by this Commission.

Likewise, the Commission finds that Talk and XO have correctly interpreted the intent of the *TRO Remand Order* with regard to move, add, and change orders necessary ***to meet the needs of its embedded customer base*** during the transition period established by the FCC. Paragraph 199 of the *TRO Remand Order* is typical of the provisions made for the transition period by the FCC:

> Finally, we adopt a transition plan that requires competitive LECs to submit orders to convert their UNE-P customers to alternative arrangements within twelve months of the effective date of this order. This transition period shall apply only to the embedded customer base, and does not permit competitive LECs to add new customers using unbundled access to local circuit switching. During the twelve-month transition period, which does not supersede any alternative arrangements that carriers voluntarily have negotiated on a commercial basis, competitive LECs will continue to have access to UNE-P priced at TELRIC plus one dollar until the incumbent LEC successfully migrates those UNE-P customers to the competitive LECs' switches or to alternative access arrangements negotiated by the carriers.

Paragraph 199 of the *TRO Remand Order*, pp. 109-110. (Footnote deleted).

During the 12-month transition period an ILEC is required to provide unbundled local switching to a CLEC to allow the CLEC to serve its embedded base of end-user customers as shown by Rule 51.319(d)(2)(i) and (iii), which in relevant part, provides:

> (i) An incumbent LEC is not required to provide access to local circuit switching on an unbundled basis to requesting telecommunications carriers for the purpose of serving end-user customers using DS0 capacity loops.
>
> * * * * *
>
> (iii) Notwithstanding paragraph (d)(2)(i) of this section, for a 12-month period from the effective date of the Triennial Review Remand Order, an incumbent LEC shall provide access to local circuit switching on an unbundled basis for a requesting carrier to serve its embedded base of end-user customers.

AL-18 sets forth SBC's position that on and after March 11, 2005, the *TRO Remand Order* allows SBC to decline to provide any "New" LSRs for "new lines being added to existing Mass

Market Unbundled Local Switching/UNE-P accounts" or any "Migration" or "Move" LSRs for Mass Market Unbundled Local Switching/UNE-P accounts. AL-18, p. 1. SBC insists that its interpretation is supported by Paragraphs 5 and 227 of the TRO Remand Order, which refer to UNE arrangements, not customers. SBC's position might be more persuasive had the FCC specified that on and after March 11, 2005, the embedded base that should benefit from the transition period was limited to existing lines and UNE arrangements. However, the FCC did not take such a limited approach in its rules. Rather, the FCC chose to require that an ILEC "shall provide access to local circuit switching on an unbundled basis for a requesting carrier to serve **its embedded base of end-user customers**." Rule 51.319(d)(2)(iii). (Emphasis added). The distinction between the embedded base of *lines* versus the embedded base of end-user *customers* is critical and recognizes that the needs during the transition period of an existing CLEC customer may well go beyond the level of service provided as of March 11, 2005. By focusing on the needs of the embedded base of end-user customers rather than on lines, the FCC has ensured that the transition period will not serve as a means for an ILEC to frustrate a CLEC's end-user customers by denying the CLEC's efforts to keep its customers satisfied.[7]

Finally, the Commission is persuaded by the arguments of Talk and XO to the effect that it would be contradictory for SBC to assert the right to unilaterally implement the requirements of the *TRO Remand Order* while it refuses to implement provisions approved by both the *TRO* and *USTA II* that are favorable to the CLECs, such as clearer EEL criteria, the ability to obtain routine network modifications, and commingling rights. However, these issues are not sufficiently momentous to require emergency consideration. Rather, the Commission finds that such

[7] *See, TRO Remand Order*, p. 128, paragraph 226 and footnote 626, which indicate the FCC's concern that its transition plan be implemented in a way that avoids harmful disruption in the telecommunications markets.

arguments are more properly considered in Cases Nos. U-14303, U-14305, and U-14327, which are scheduled for oral argument before the Commission on March 17, 2005.

In its February 28, 2005 order, this Commission recognized that "the FCC did not contemplate that ILECs may unilaterally dictate to CLECs the changes to their interconnection agreements necessary to implement the FCC's findings in the February 4 order." February 28 order, p. 5. Further, the Commission stated that the change of law provisions contained in the parties' interconnection agreements "must be followed." February 28 order, p. 6. As a result, the Commission finds that SBC shall not unilaterally implement its interpretation of the *TRO Remand Order,* which the Commission has determined to be erroneous. Rather, SBC may only implement the *TRO Remand Order* changes through the change of law provisions contained in the parties' interconnection agreements in the manner described in the Commission's February 28 order in this proceeding.

In the February 28 order, the Commission indicated that SBC could bill the CLECs at the rate effective March 11, 2005. However, the Commission further provided that SBC could not take any collection actions against the CLECs for the portion of the bill caused by the increase on March 11, 2005. To ensure that there would be no undue benefit to the CLECs or harm to SBC due to the delay associated with the collaborative process, the Commission also provided that there would be a true-up proceeding at the end of the collaborative process. The Commission wishes to emphasize that these provisions remain in effect.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1991 PA 179, as amended, MCL 484.2101 *et seq.*; the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 USC 151

et seq.; 1969 PA 306, as amended, MCL 24.201 *et seq.*; and the Commission's Rules of Practice and Procedure, as amended, 1999 AC, R 460.17101 *et seq.*

b. The relief requested in the March 7 motion filed by Talk and XO should be granted in part and deferred in part, as more fully explained in this order.

THEREFORE, IT IS ORDERED that:

A. SBC Michigan shall provision high-capacity loops and transport on and after March 11, 2005 where a competitive local exchange carrier has self-certified that, to the best of its knowledge, the competitive local exchange carrier's request is consistent with the requirements of the Federal Communications Commission's February 4, 2005 *TRO Remand Order*.

B. SBC Michigan shall provision local service requests for mass market unbundled local switching, unbundled network element-platform, DS1 and DS3 high capacity loops, DS1 and DS3 dedicated transport, dark fiber transport, and dark fiber loops on or after March 11, 2005, consistent with the requirements of this order.

C. SBC Michigan shall comply with the requirements of both this order and the Commission's February 28, 2005 order in this proceeding.

The Commission reserves jurisdiction and may issue further orders as necessary.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ J. Peter Lark
Chairman

(S E A L)

/s/ Robert B. Nelson
Commissioner

/s/ Laura Chappelle
Commissioner

By its action of March 9, 2005.

/s/ Mary Jo Kunkle
Its Executive Secretary

The Commission reserves jurisdiction and may issue further orders as necessary.

MICHIGAN PUBLIC SERVICE COMMISSION

Chairman

Commissioner

Commissioner

By its action of March 9, 2005.

Its Executive Secretary

EXHIBIT I

FILED

MAR 11 2005
CLERK'S OFFICE
U. S. DISTRICT COURT
EASTERN MICHIGAN

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

MCIMETRO ACCESS TRANSMISSION SERVICES LLC, Plaintiff, v. MICHIGAN BELL TELEPHONE COMPANY, d/b/a SBC MICHIGAN, Defendant.	)	Civil Action No. 05-70885 Hon. Arthur J. Tarnow Magistrate Judge Pepe

ORDER GRANTING PRELIMINARY INJUNCTION

Before the Court is the Motion for a Temporary Restraining Order and Preliminary Injunction filed on March 8, 2005 by plaintiff MCImetro Access Transmission Services LLC's ("MCI"). MCI's Motion seeks a preliminary injunction against defendant Michigan Bell Telephone Company, d/b/a SBC Michigan ("SBC"). The Court, having reviewed MCI's Motion and supporting papers and SBC's response in opposition, and having heard argument from both MCI and SBC on MCI's Motion on March 11, 2005, hereby **ORDERS** as follows:

IT IS HEREBY ORDERED THAT MCI's motion is **GRANTED**, and :

(1) SBC, as well as its agents, successors, assigns, and all those acting in concert with them, are hereby **ENJOINED**, pending further Order of this Court, from rejecting orders placed by MCI to establish telephone service for new MCI customers in Michigan using the services set forth in Appendix XXIII (the "UNE" Appendix) including but not limited to "NEW UNE-P" as set forth in section 16.5 of the UNE Appendix, under the terms and conditions set forth in the parties' interconnection agreement;

(2) The Court will issue a written opinion setting forth specific findings regarding the preliminary injunction factors forthwith.

IT IS SO ORDERED THIS 11TH DAY OF MARCH, 2005, 11:55 p.m.

Cathy J. Tarnow
United States District Judge

A TRUE COPY
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
BY: Cathe A. Pickles
DEPUTY CLERK

EXHIBIT J

Docket 3662 - Verizon RI Tariff filing to implement the FCC' unbundled (UNE) rules regarding as set forth in the TRO R Order issued February 4, 2005

- Verizon RI proposed tariff filing for effect March 11, 2005 (filed 2/18/05)
- Conversent Communications of RI - comments and objection to Verizon's filing (3/3/05)
- CLECs CTC Communications and Lightship Telecom (collectively "Swidler CLECs") obj (3/4/05)
- CLECs ARC Networks, Covad Communications, Broadview Networks and Broadview N Corp. (collectively "Adler CLECs") comments to Verizon's filing (3/7/05)
- Verizon RI Reply to Comments of CLECs Regarding Proposed Tariff Revision (3/7/05)
- Verizon RI Reply to Comments of the Joint Commentors Regarding Proposed Tariff (3/7
- Division of Public Utilities Summary of Comparison of Parties' (Verizon, Conversent & D Positions (3/7/05)
- At open meeting held 3/8/05, the Commisison dopted Verizon's proposed tariff filing on interim basis, pursuant to RIGL 39-3-12. The tariff would be subject to further investigati determine if the wording of the proposed tariff needs to be revised and if necessary, the would be entitled to any refund or compensation for any inappropriate rate or action by ' during this interim period.

RI Public Utilities Commission, 89 Jefferson Boulevard, Warwick, RI 02888
Voice: 401-941-4500 • Email: mary.kent@ripuc.org

State of Rhode Island Web Site

Last modified 03/09/2005 12:10:11

STATE OF SOUTH CAROLINA)
) CERTIFICATE OF SERVICE
COUNTY OF RICHLAND)

The undersigned, Nyla M. Laney, hereby certifies that she is employed by the Legal Department for BellSouth Telecommunications, Inc. ("BellSouth") and that she has caused BellSouth Telecommunications, Inc.'s Letter to Mr. Charles Terreni in Docket No. 2004-316-C to be served upon the following this March 15, 2005:

Florence P. Belser, Esquire
General Counsel
Post Office Box 11263
Columbia, South Carolina 29211
(Office of Regulatory Staff)
(U. S. Mail and Electronic Mail)

Stan Bugner
State Director
1301 Gervais Street
Suite 825
Columbia, South Carolina 29201
(Verizon)
(U. S. Mail and Electronic Mail)

Steven W. Hamm, Esquire
C. Jo Anne Wessinger Hill, Esquire
Richardson, Plowden, Carpenter & Robinson, P.A.
1600 Marion Street
Post Office Box 7788
Columbia, South Carolina 29202
(Verizon)
(U. S. Mail and Electronic Mail)

Jocelyn G. Boyd, Esquire
Staff Attorney
S. C. Public Service Commission
Post Office Box 11649
Columbia, South Carolina 29211
(PSC Staff)
(U. S. Mail and Electronic Mail)

F. David Butler, Esquire
General Counsel
S. C. Public Service Commission
Post Office Box 11649
Columbia, South Carolina 29211
(PSC Staff)
(U. S. Mail and Electronic Mail)

Robert E. Tyson, Jr., Esquire
Sowell Gray Stepp & Laffitte
1310 Gadsden Street
Columbia, South Carolina 29211
(ITC^Delta Com Communications, Inc.)
(U. S. Mail and Electronic Mail)

M. John Bowen, Jr., Esquire
Margaret M. Fox, Esquire
McNair Law Firm, P.A.
Post Office Box 11390
Columbia, South Carolina 29211
(SCTC)
(U. S. Mail and Electronic Mail)

William Atkinson, Esquire
Attorney, State Regulatory
3065 Cumberland Circle
Mailstop GAATLD0602
Atlanta, Georgia 30339
(United Telephone Company of the Carolinas and
Sprint Communications Company, L.P.)
(U. S. Mail and Electronic Mail)

Russell B. Shetterly, Esquire
P. O. Box 8207
Columbia, South Carolina 29202
(Knology of Charleston and Knology of
South Carolina, Inc.)
(U. S. Mail and Electronic Mail)

Darra W. Cothran, Esquire
Woodward, Cothran & Herndon
1200 Main Street, 6th Floor
Post Office Box 12399
Columbia, South Carolina 29211
(MCI WorldCom Network Service, Inc.
MCI WorldCom Communications and
MCImetro Access Transmission Services, Inc.)
(U. S. Mail and Electronic Mail)

John J. Pringle, Jr., Esquire
Ellis Lawhorne & Sims, P.A.
Post Office Box 2285
Columbia, South Carolina 29202
(AT&T)
(U. S. Mail and Electronic Mail)

Marsha A. Ward, Esquire
Kennard B. Woods, Esquire
MCI WorldCom, Inc.
Law and Public Policy
6 Concourse Parkway, Suite 3200
Atlanta, Georgia 30328
(MCI)
(U. S. Mail and Electronic Mail)

Frank R. Ellerbe, Esquire
Bonnie D. Shealy, Esquire
Robinson, McFadden & Moore, P.C.
1901 Main Street, Suite 1200
Post Office Box 944
Columbia, South Carolina 29202
(South Carolina Cable Television Association)
(U. S. Mail and Electronic Mail)

Genevieve Morelli
Kelley, Drye & Warren, LLP
1200 19th Street, N.W.
Washington, D.C. 20036
(KMC Telecom III, Inc.)
(U. S. Mail and Electronic Mail)

John D. McLaughlin, Jr.
Director, State Government Affairs
KMC Telecom, Inc.
1755 North Brown Road
Lawrenceville, GA 30043
(KMC Telecom)
(U. S. Mail and Electronic Mail)

Scott A. Elliott, Esquire
Elliott & Elliott
721 Olive Street
Columbia, South Carolina 29205
(Sprint/United Telephone)
(U. S. Mail and Electronic Mail)

Marty Bocock, Esquire
Director of Regulatory Affairs
1122 Lady Street, Suite 1050
Columbia, South Carolina 29201
(Sprint/United Telephone Company)
(U. S. Mail and Electronic Mail)

Faye A. Flowers, Esquire
Parker Poe Adams & Bernstein LLP
1201 Main Street, Suite 1450
Columbia, South Carolina 29202
(US LEC of South Carolina and Southeastern Competitive Carriers Association)
(U. S. Mail and Electronic Mail)

Andrew O. Isar
Director – State Affairs
7901 Skansie Avenue, Suite 240
Gig Harbor, WA 98335
(ASCENT)
(U. S. Mail and Electronic Mail)

Nanette Edwards, Esquire
ITC^DeltaCom Communications, Inc.
4092 S. Memorial Parkway
Huntsville, Alabama 25802
(U. S. Mail and Electronic Mail)

John A. Doyle, Jr., Esquire
Parker, Poe, Adams & Bernstein, L.L.P.
150 Fayetteville Street Mall, Suite 1400
Raleigh, North Carolina 27602
(US LEC of South Carolina)
(U. S. Mail and Electronic Mail)

Glenn S. Richards, Esquire
Shaw Pittman LLP
2300 N. Street, NW
Washington, DC 20037
(AmeriMex Communications Corp.)
(U. S. Mail and Electronic Mail)

Nyla M. Laney

PC Docs # 554784